

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS: Bryan et al. PATENT NO. 6,001,130

SERIAL NO.: GROUP ART UNIT:

FILED: December 14, 2001 EXAMINER:

FOR: HUMAN SPINAL DISC PROSTHESIS WITH HINGES

ATTORNEY DOCKET NO.: 46739/268134

Assistant Commissioner for  
Patents  
Washington, D.C. 20231

DATE: December 14, 2001

REISSUE DECLARATION

Sir:

The undersigned, Vincent Bryan and Alex Kunzler, hereby declare as follows:

1. We are the named inventors of U.S. Letters Patent No. 6,001,130, entitled "Human Spinal Disc Prosthesis," which was granted on December 14, 1999, and our respective residences and countries of citizenship are provided below.
  
2. We verily believe ourselves to be the original, first and joint inventors of the invention described and claimed in U.S. Patent No. 6,001,130.

3. We verily believe United States Letters Patent No. 6,001,130 to be partially inoperative or invalid by reason of our claiming less than we had a right to claim, and by reason of errors therein.

4. The errors in the original Letters Patent were discovered as a result of recent discussions between in-house counsel and outside counsel during reviews of assignee's patent portfolio.

5. During those discussions, it was discovered that claims 1-16, 19, and 20 of the patent contained limitations that were not necessary for the claims to be patentable over the art of record.

6. More particularly, during this review, it was discovered that claims 1, 16, and 19 recited limitations or elements that are not necessary for patentability over the art of record.

7. In claims 1 and 16, the limitation that the second leg is adapted for affixation to adjacent bone structure is not required for the claim to be patentable over the art of record.

8. In claim 19, the element "a plurality of said integral disc units" is not required for the claim to be patentable over the art of record.

9. In addition to claiming less than we had a right to claim, the claims contain errors that render them wholly or partially inoperative or invalid.

10. More particularly, claims 1-20 each refer to a "vertebral disc," which does not exist, and should instead refer to an "intervertebral disc."

11. The incorrect terms “vertebral disc” or “intravertebral disc” also appear at various points in the specification, which are amended to recite an “intervertebral disc” in the attached Preliminary Amendment.

12. The aforementioned defects in the claims arose during the prosecution of the application that resulted in the original Letters Patent because of the applicants’ and attorney’s failure to appreciate the full scope of the invention. More specifically, it was believed that the limitations to the claims described above in paragraphs 7 and 8 were necessary to completely recite the endoprosthesis, and it was not appreciated that claims to an endoprosthesis without provision for attachment to the vertebral bodies, or without a plurality of disc units, would be patentable.

13. The errors in the claims were discovered during a recent review of the patent portfolio of the assignee, which resulted in a reassessment of the scope of the claims in the patent, and the realization that claims should have been sought that recited the novel and nonobvious features of the invention, and did not recite features that were unnecessary to patentability.

14. After becoming aware of the aforementioned errors, a detailed review of the prosecution history of the original application was undertaken to ascertain how the errors occurred, and the present application for reissue of United States Letters Patent 6,001,130 was promptly prepared. Amendments to claims 1, 16, and 19 were prepared in the form of the accompanying Preliminary Amendment to correct the above defects and errors, and to render the claims more readable, and additional dependent claims 21 and 22 were added to provide more comprehensive claim coverage.

15. This application for Letters Patent addresses the aforementioned defects in the claims and specification. These errors arose through inadvertence, and without any deceptive intention on our part.

16. We verily believe ourselves to be the first, original and joint inventors of the subject matter that is claimed in this application for reissue and for which reissue of the original Letters Patent on the invention entitled "Human Spinal Disc Endoprosthesis With Hinges" is sought, and do not believe that the invention was ever known or used before our invention thereof was made.

17. We have reviewed and understand the contents of the specification, including the claims as presented in the accompanying application for reissue.

18. We acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, §§ 1.56(a).

19. We offer to surrender U.S. Letters Patent No. 6,001,130, conditioned upon the reissue of said Letters Patent.

20. We hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

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Inventor's signature \_\_\_\_\_ Date \_\_\_\_\_

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